

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JACK REESE, FRANCES ELAINE PIDDE,
JAMES CICHANOFSKY, ROGER MILLER,
and GEORGE NOWLIN on
behalf of themselves and
a similarly situated class,

Hon. Patrick J. Duggan

Case No. 04-70592

Plaintiffs,

v.

Class Action

CNH GLOBAL N.V., formerly
known as Case Corporation,
and THE COMPANY LLC,

Defendants.

Roger J. McClow (P27170)
David R. Radtke (P47016)
Darcie R. Brault (P43864)
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**OBJECTIONS TO THE MAGISTRATE JUDGE'S ORDER DENYING PLAINTIFFS'
MOTION FOR PARTIAL RECONSIDERATION OF ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR LEAVE TO EXCEED TWENTY-FIVE
INTERROGATORIES (R. 352)**

Plaintiffs, by and through their counsel, McKnight, McClow, Canzano, Smith & Radtke,
P.C., assert the following objections under Fed. R. Civ. Proc. 72:

1. On May 20, 2013, Magistrate Judge Komives issued an “Order Granting in Part Plaintiffs’ March 21, 2013 Motion for Leave to Exceed Twenty-Five Interrogatories” R. 346.

2. The Court ordered that all but four of the Interrogatories be answered within thirty days.

3. The Interrogatories at issue here are:

3. Identify each person the Company expects to testify and/or provide information in support of its claims or defenses, and state the subject matter about which the witness has knowledge.

4. Identify each person the Company expects to use as an expert witness in this matter.

...

48. Identify all documents the Company intends to use, either in summary judgment proceedings or at trial, to support its position that the benefits in the Proposed Plan are reasonable.

4. As to Interrogatories 3, 4, 32 and 48, the Court stated that CNH claimed the interrogatories were duplicative of “other written requests by plaintiffs and the parties’ mandatory-disclosure requirements” citing R. 339 at p. 8. The Magistrate Judge stated, “Doc. Ent. 342 at 5 ¶ 4, does not address the objections defendant sets forth in its response. Therefore, at this time, CNH need not provide further answers to these four interrogatories. However plaintiffs have leave to seek reconsideration of my ruling with respect to these four interrogatories if they are able to rebut or address the related argument set forth by CNH in its response.” R. 346 Pg. ID 12317.

5. Plaintiffs filed a motion for reconsideration as suggested by Magistrate Judge Komives, indicating primarily that the parties never filed Initial Disclosures under Fed. R. Civ. Proc. 26, and therefore, **Plaintiffs have never been provided information regarding the identity of witnesses (lay or expert) or documents that the Company intends to use to support its position in this matter**, as requested in Interrogatories 3, 4 and 48. R. 337.

6. Despite Plaintiffs' articulation that the interrogatories were not cumulative because Defendant CNH **never filed initial disclosures**, the Magistrate Judge nonetheless determined that the requests were cumulative. R. 352.

7. Defendant concedes that it never filed initial disclosures.

8. Therefore, CNH has neither made its initial disclosures, nor answered Plaintiffs' interrogatories 3, 4 and 48. As a result, Defendants have not identified either witnesses (lay or expert) or its proposed exhibits.

9. Plaintiffs need this information (the identity of potential witnesses and potential exhibits) in order to conduct discovery relative to the defense in this matter, e.g. depose potential witnesses or request documents.

10. It was clear error for the Magistrate Judge to determine that the interrogatories were cumulative of disclosure rules that were not followed. In other words, in order to be duplicative, the information has to have been provided *at least once*. To deny such basic discovery as that required by initial disclosures would be contrary to law and clearly erroneous.

11. The Court must modify or set aside any portion of the magistrate judge's order that is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A) ("A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law."); Fed. R. Civ. P. 72(a) ("The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.").

WHEREFORE, for the above-cited reasons, Plaintiffs respectfully request that the Court reverse the Magistrate Judge's decision denying Plaintiffs' May 28, 2013 Motion for Reconsideration of May 20, 2013 Order (Doc. Ent. 346) Granting in Part Plaintiffs' March 21,

2013 Motion for Leave to Exceed Twenty-Five Interrogatories (Doc. Ent. 337), with respect to Interrogatories 3, 4 and 48.

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,
SMITH & RADTKE, P.C.

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Darcie R. Brault (P43864)
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Dated: June 25, 2013

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JACK REESE, FRANCES ELAINE PIDDE,
JAMES CICHANOFSKY, ROGER MILLER,
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**BRIEF IN SUPPORT OF PLAINTIFFS' APPEAL TO THE DISTRICT COURT
JUDGE REGARDING THE MAGISTRATE JUDGE'S ORDER DENYING
PLAINTIFFS' MOTION FOR PARTIAL RECONSIDERATION OF ORDER
GRANTING IN PART PLAINTIFFS' MOTION FOR LEAVE TO EXCEED
TWENTY-FIVE INTERROGATORIES (R. 352)**

Plaintiffs rely upon 28 U.S.C. § 636(b)(1)(A), Fed. R. Civ. Pr. 72 and L.R. 7.1.

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,
SMITH & RADTKE, P.C.

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Dated: June 25, 2013

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2013 I electronically filed the foregoing paper with the Clerk of the Court using the ECF system.

Respectfully Submitted,

McKNIGHT, McCLOW, CANZANO,
SMITH & RADTKE, P.C.

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